

Exhibit A

1 THE CLERK: 08 C 4922, Domanus v Lewicki, et al.

2 THE COURT: Okay, good morning. For Jan Domanus?

3 MR. MICHAELS: Robert Michaels on behalf of plaintiffs.

4 THE COURT: All right, thanks, Mr. Michaels.

5 MR. FUKSA: Lucas Fuxsa on behalf of the individual
6 defendants.

7 THE COURT: Okay. And?

8 MR. JASZCZUK: Martin Jaszczuk on behalf of the KBP
9 entity, your Honor.

10 THE COURT: Okay, good morning, sir. Is it J-a-c -- how
11 do you spell it?

12 MR. JASZCZUK: I have been asked that a lot.
13 J-a-s-z-c-z-u-k.

14 THE COURT: Okay. I'll never get it right. But I
15 intend to.

16 MR. JASZCZUK: I barely get it right.

17 MR. MICHAELS: You should hear the correct pronunciation.

18 THE COURT: Okay. All right. So we had a status last
19 week and several things came up. We laid four things out in
20 our minute order. So I would like to stick to our agenda from
21 the minute order, and tell me if you have any answers.

22 We also had a motion that we, among the things was a
23 motion to extend the dates. So a due date for providing
24 defendant's responses to plaintiff's set of interrogatories.

25 MR. MICHAELS: Judge, I think before we talk about each

1 of the four things --

2 THE COURT: Okay.

3 MR. MICHAELS: -- I wanted to give you just a --

4 THE COURT: Oh, good.

5 MR. MICHAELS: -- bit of background on what is driving
6 the sense of urgency on our side of this and then we can get
7 into each of the four agenda items that Mr. Fuksa and I did
8 meet and confer about in person as your Honor directed.

9 If we were talking about harm that happened in the past
10 exclusively, delay would be undesirable perhaps, but certainly
11 more tolerable on our end. But we're talking about what we
12 allege is an ongoing fraud, and while it appears to us that
13 the case is being slowed down over here, in Poland the
14 defendants are taking further actions to dilute my client's
15 ownership in the KBP entities, and in fact, even earlier this
16 morning in Poland, Adam Swiech's wife, who was installed as
17 president of KBP, convened a meeting to bring in an additional
18 shareholder of KBP.

19 I said as sort of a global point to Mr. Fuksa that if the
20 defendants would agree to cease and desist efforts to further
21 dilute our ownership in KBP, we could be much more
22 accommodating about time in this case because we would not see
23 ourselves in a race against time.

24 And we -- I said that if they were willing to do that,
25 then we would be much more accommodating on timing here

1 because we have no desire to personally immiserate anyone or
2 demand the impossible or anything like that. But
3 unfortunately, from what Mr. Fuksa and I discussed this
4 morning, the defendants are not willing to do that.

5 So against that background, you know, the sense of
6 urgency we feel is a great one on all of these issues. And
7 just so you understand, we're not just trying to step on the
8 accelerator because we're tired or we're bored. It's just we
9 see our interests as threatened in a dire way by events that
10 continue to go on.

11 THE COURT: All right. So you know, I think judges learn
12 cases halfway through. I don't think they ever get it by
13 reading a complaint, you know, because it's all too much at
14 first. Tell me in a hundred words or less how this is a new
15 harm or an ongoing harm.

16 MR. MICHAELS: Certainly.

17 THE COURT: Your folks put money, gave money to them and
18 invested it, yes?

19 MR. MICHAELS: Yes. And over time, the defendants
20 diluted our ownership in KBP by investing as capital
21 contributions money that we allege they had misappropriated
22 from the KBP entities. So that diluted our proportional
23 ownership of KBP, and what is happening now in Poland is that
24 Adam Swiech, who is because of this dilution now the majority
25 shareholder of KBP taking further steps to reduce our

1 proportional ownership and eventually trigger the squeeze-out
2 provisions under Polish law that would, if he gets a portion
3 of ownership over I think it's 75 percent, he can squeeze out
4 the minority shareholders on very unfavorable terms.

5 THE COURT: So did your folks get to vote this morning
6 on this?

7 MR. MICHAELS: They did get to vote, but it's useless
8 because Adam has the majority of shares, Adam Swiech, and he
9 votes his majority of shares and he can prevail on anything he
10 wants to prevail on.

11 MR. FUKSA: Judge, if I may, that explanation is quite
12 problematic on a variety of fronts. First of all, it shows
13 really what the urgency is about, and if it's not based on
14 actual harm, then there is no urgency at all, which is the way
15 I understand their position.

16 And there is no harm because this is the direct
17 day-to-day operations of the company that are ongoing. This
18 isn't some, you know, little mom and pop shop. Their clients
19 are people such as UBS, the tenants, Shell Oil, okay? And
20 they have been continuing to make capital calls because there
21 are buildings that aren't developed. If that's the allegation
22 regarding the fraud, then, you know, I'll be happy to file a
23 motion for summary judgment tomorrow because there is
24 absolutely nothing that I have heard yet, and I don't think
25 your Honor has heard, to indicate that this is an ongoing

1 fraud. It wasn't even alleged so in the complaint.

2 There were certain transactions or maybe actions that
3 were alleged in that manner, but it wasn't alleged that this
4 is an ongoing harm and that it continues to be a harm, and for
5 the shareholders to have a meeting and maybe consider taking
6 in a new shareholder because they need money, which has always
7 been the problem, which my client Adam has put in millions of
8 his own money and given loans to the company because the other
9 shareholders weren't able to, he should be punished for that?

10 I mean, it's ludicrous, Judge, and it goes exactly to
11 show right now why the plaintiffs are making this such an
12 urgent matter regarding discovery, because it's an ulterior
13 way for them to stop this company from operating in its
14 day-to-day functions.

15 THE COURT: Well, that would hurt -- I mean, that would
16 hurt the plaintiffs if the company couldn't operate. I mean,
17 that doesn't --

18 MR. FUKSA: Well, that's --

19 THE COURT: I mean, to me --

20 MR. FUKSA: -- circular reasoning. If they can't raise
21 money in order to further promote the interests of this
22 business in order to build the additional buildings --

23 THE COURT: Well, that will be -- okay, I just -- this
24 wasn't an argument on summary judgment. I wanted to be
25 refreshed. I just wanted to be refreshed on this is a harm,

1 this is a harm. I wanted to know if it was a money harm, a
2 broken heart harm. There is all kinds of harms I hear, okay?

3 MR. FUKSA: I have had the broken heart harm, Judge.

4 THE COURT: So I mean, I'm trying to get the category
5 of --

6 MR. FUKSA: Well, Judge, we can't agree on that. You
7 know, if they want to make it urgent because of these --
8 opposing counsel had asked me, if you agree to stop these
9 capital calls and stop, you know, maybe soliciting additional
10 shareholders, we'll agree to pull back on the urgency of the
11 discovery. I said we can't agree to that. So we're past
12 that. I mean, if we could get to the first item on the agenda
13 then, you know --

14 MR. MICHAELS: And Judge, just to -- I think Mr. Fuksa is
15 right about that issue. If they won't agree -- I would say
16 this. The complaint expressly repeatedly alleges an ongoing
17 harm.

18 THE COURT: Right.

19 MR. MICHAELS: And if a new shareholder they were
20 bringing in was some legitimate third-party, we would have no
21 problem with that. The shareholder they're bringing in is an
22 entity that was formerly owned by one of the defendants that
23 was used as part of the fraud. So that's the issue we're
24 having. But if they can't agree to it, that's fine. And he
25 doesn't have to agree to it.

1 THE COURT: No, and that was part of the meet and
2 confer.

3 MR. MICHAELS: I was just trying to be creative to try
4 to --

5 THE COURT: Right.

6 MR. MICHAELS: -- find a way to compromise, and if that
7 doesn't work, then that's fine.

8 THE COURT: Okay. So, well, let's see what we have got.
9 So actually, it shouldn't be No. 1 a due date for providing
10 two, okay. Let's do the timetable for producing the
11 responsive documents from Richard Swiech's hard drive.

12 MR. FUKSA: Judge, I think with respect to No. 1, that
13 was a specific set of interrogatories regarding transactions,
14 so I could address that to the court.

15 THE COURT: And that's the one you wanted -- that was a
16 written motion --

17 MR. FUKSA: No, that was a Part 2 agenda item, more
18 related to the discs.

19 THE COURT: Oh, okay.

20 MR. FUKSA: If I may judge, with respect to No. 1,
21 providing a due date for responses to plaintiff's second set
22 of interrogatories, I met with Mr. Michaels and what these
23 responses are is Mr. Michaels would like a response to -- and
24 I can bring this to your Honor -- a set of transactions, pages
25 of transactions dating from 1997 that simply show the

1 recipient, payor and the amount.

2 MR. MICHAELS: And the date.

3 MR. FUKSA: And the date, okay. I have asked all three
4 of my clients about this and they told me I'm crazy, okay,
5 there is nothing else to substantiate or help us in directing
6 us as to what these transactions are for. The company makes
7 thousands of transactions on, you know, an ongoing basis, and
8 to list these transactions and say --

9 THE COURT: Let me see this. Let me see this.

10 MR. FUKSA: And, Judge, also, even previous counsel
11 said, and this is my exact same argument, previous counsel
12 said it might help to answer your request if the transactions
13 listed in Exhibit A were separated based on which defendant
14 you believe has information and if we had any documents upon
15 which you are relying to complete (UI) if plaintiffs have
16 documents from which they are extracting information
17 (inaudible) but Exhibit A, we request that plaintiffs provide
18 and identify those documents for us. That's all I'm asking
19 because we -- and there is pages of these.

20 MR. MICHAELS: Your Honor, when you're done looking at
21 that, I would like to respond to what Mr. Fuksa just said.

22 (Pause)

23 MR. FUKSA: They simply do not know or do not remember,
24 Judge, without additional information. I'm not trying --
25 they're not trying to avoid answering these.

1 THE COURT: So do you have this broken down -- so first
2 of all, where did you get these documents that you made your
3 list from? Did you get them from them is what I'm asking, and
4 do you have further identification as to each of these
5 transactions?

6 MR. MICHAELS: Your Honor, if I could respond to that.

7 THE COURT: Sure.

8 MR. MICHAELS: That list was largely derived from a
9 forensic report that was prepared by the Polish prosecutor's
10 office who has, you know, has charged the defendants with
11 crimes related to these same transactions. We provided a copy
12 of the forensic report to former counsel, and presumably Mr.
13 Fuksa has those now.

14 We also provided and I think a set of the responses are
15 in the packet that you have there, some extraordinarily
16 detailed interrogatory responses after Ms. Shores wrote the
17 letter that Mr. Fuksa has cited. The interrogatory responses
18 --

19 THE COURT: No, the letter Mr. Fuksa is citing is your
20 letter. Actually, this is a Robinson Curley letter --

21 MR. MICHAELS: Oh, okay.

22 THE COURT: -- explaining what you want.

23 MR. MICHAELS: Okay.

24 THE COURT: And that you have -- this explains No. 2 and
25 3 and I guess Exhibit A is 2 and 3.

1 MR. MICHAELS: Right.

2 THE COURT: And then I don't -- so all I have -- all I
3 can see here -- so this, now this has a KBP. This has a date
4 on when it occurred --

5 MR. MICHAELS: Your Honor --

6 THE COURT: -- the recipient of, is it the recipient of
7 the transfer or the recipient -- I don't know what recipient
8 means. The payor was this so it looks like it went to, most
9 of them to KBP and then it's the amount and it says PLN.

10 MR. MICHAELS: Right. What the chart contains, your
11 Honor, is a list of, for each of the transactions that we
12 allege were fraudulent transactions paid to an insider or a
13 defendant himself, we list the date of the transaction, the
14 amount of the transaction, the KBP entity that was caused to
15 make the transfer, and the recipient of the transfer.

16 All of these recipients are either defendants or entities
17 they themselves control. We're not asking them to explain the
18 payments to third parties. So what we did, I broke down that
19 list of each of the transfers that we wanted their explanation
20 of. These are transfers that they were on collectively both
21 sides of. So -- and what we did to provide more background on
22 those transfers is we produced to them A, the prosecutor's
23 forensic report from which we got this material.

24 THE COURT: Right.

25 MR. MICHAELS: And then B, about 60-page detailed

1 interrogatory responses, my responses to the interrogatory
2 responses that Gordon & Karr sent us. Those interrogatory
3 responses identify which defendant we believe is affiliated
4 with each of the insider entities that were the recipients.
5 Some of the recipients of those were just Adam Swiech, so if
6 Adam received it and then the other, you know, there were
7 other entities there, for example, connection SP-Z0, we
8 explain in their interrogatory responses, that's an entity
9 that was owned and controlled by Derek Lewicki. So we gave
10 them the prosecutor's report from which that came on
11 interrogatory responses that explained why based on what we
12 know now so far, we believe those transactions were
13 fraudulent. And they were all involved in those transactions.

14 And we also identify there are numerous documents that
15 they ought to have that -- I mean, many of those were pursuant
16 to contracts and where we had the contracts we produced them.

17 MR. FUKSA: That's all we need. That's all we need,
18 Judge. If he could identify for each transaction this is from
19 this contract, now tell me, you know, whether it was
20 fraudulent or not or what it was for, I would be happy to do
21 that. I would be, you know -- instead this is a fishing
22 expedition --

23 THE COURT: This is not. You're not allowed to say
24 that. You are not allowed to say that. You're allowed to say
25 other things, okay? You're not allowed. The reason you are

1 getting the boots put to you, and I'm not going to put the
2 boots to you on time, is these people, there has been -- I
3 mean, you know, would it take him a long time to do that?
4 Yes.

5 And I'm going to ask, I'm going to ask Mr. Michaels to go
6 back, but if he has already -- if you have a prosecutor's
7 memo, okay, that has all this information in it, okay, what is
8 going to happen is people come in here and frankly go on and
9 on and on, they don't want to answer interrogatories. They
10 say to me wait until the dep. How the heck is anybody ever
11 going to get through a dep -- this is going to help you as
12 much as it's going to help him.

13 MR. FUKSA: I 100 percent agree, Judge.

14 THE COURT: I'm not going to send him back to the
15 drawing board on everyone of these things if it's in the
16 prosecutor's report --

17 MR. FUKSA: I haven't seen that, Judge, so if it is,
18 that's fine. The source of the information I learned today
19 with respect to the prosecutor's report, so I could send that
20 to my clients with that list and say "This is where you should
21 find that information," and if they do, then fine. I'm not
22 trying to be evasive at all. Ms. Shores said the exact same
23 thing.

24 THE COURT: You're not. You're not. It isn't, you
25 know, but we are our brother's or sister's keepers in a way.

1 I'm not saying you are, okay? So does the prosecutor report,
2 because I haven't seen the prosecutor report, is the date of
3 transaction in the prosecutor report?

4 MR. MICHAELS: It's all in there, Judge, because we
5 didn't have -- because we were not the -- we were passive
6 investors in KBP, while Adam was running the day-to-day --

7 THE COURT: You did not get -- and you did not get every
8 time a transfer was made.

9 MR. MICHAELS: No, not at all.

10 THE COURT: All right, all right, all right, so this is
11 all from -- and I'm assuming that Adam either pursuant to a
12 subpoena or grand jury or whatever they use the Poland must
13 have turned over documents to the prosecutor or did they get
14 them through the -- are these bank -- is this from a bank or
15 is it from like a Morgan Stanley Dean Witter? What is this
16 from?

17 MR. MICHAELS: My understanding is that it is from --
18 that that was synthesized by the prosecutor from KBP's bank
19 records, KBP's general ledger, or the KBP entities' general
20 ledger, KBP bank records, KBP files that had, for instance,
21 contracts and invoices, and from, to the extent they were able
22 to get them, Adam Swiech's bank records and the bank records
23 of the recipient entities that are identified in there and
24 between -- in our view between the prosecutor's report and our
25 progress responses which Mr. Fuksa told me before we met today

1 he hasn't even read yet, which I gave to him the first time I
2 went to his office and said --

3 THE COURT: Which lays out your theory.

4 MR. MICHAELS: Yes.

5 THE COURT: Lays out your theory.

6 MR. MICHAELS: Everything should be there.

7 THE COURT: All right.

8 MR. FUKSA: Judge, I'll take another stab at it. If in
9 fact the information is in the prosecutor's report or in these
10 interrogatory responses, I'm happy to do that. We don't have
11 to dwell on this.

12 I'm going to do my best -- you know, if that information
13 is in there, to get answers to these and I'll scan everything
14 to my clients, send it out, and say this is the source of the
15 information, you know, explain what these transactions are
16 for. No problem doing that, Judge. So now is just again a
17 question of time. Maybe that will be -- the question of
18 time --

19 THE COURT: We're going to do, we're going to do an
20 interim step on this. We're doing an interim step because we
21 are going to keep you guys on such a short leash and you're
22 going to come back and you're going to tell me what you have
23 done, and you need to look -- so is there anything else, Mr.
24 Michaels, other than your interrogatory answers and -- well,
25 first, let me back up.

1 Is this -- plaintiff's second set of interrogatories, is
2 there anything else that is not answered in plaintiff's second
3 set of interrogatories or is plaintiff's second set completely
4 discharged?

5 MR. MICHAELS: It is not discharged. There are other
6 things that were not responded to, but that we thought were a
7 lower priority. While I wouldn't -- I would be hesitant to
8 say it's discharged. What I would be willing to say is that
9 if he answers those -- if he answers 2 and 3, which is really
10 all we're talking about here, anything else, we would
11 reformulate into a new, into a third set that we tried to --
12 that it would then be able to reflect or comprehend what we
13 have gotten already. In other words, we are not going to --
14 we are going to take the rest of the second set of
15 interrogatories off the table, so far as we are without
16 prejudice to reask that stuff in a more targeted way later if
17 necessary. I mean, believe me, if there is --

18 THE COURT: How many sets -- so if the first set -- how
19 many interrogatories were questioned in the first set?

20 MR. MICHAELS: I think there were 6 or 7 -- oh, I have a
21 copy of the first set right here. And then your order
22 required them to respond to I think three of them. There
23 were, let's see.

24 THE COURT: Well, I mean on this, you know, this
25 number --

1 MR. MICHAELS: Four.

2 THE COURT: Four.

3 MR. MICHAELS: In the first set.

4 THE COURT: And were they as voluminous as this?

5 MR. MICHAELS: Well, the first set, the only ones that
6 they were ordered to respond to two of them, I think, and they
7 were required to identify any bank accounts.

8 THE COURT: Okay.

9 MR. MICHAELS: And provide their bank records, and the
10 other thing they were required to do was identify any entities
11 in which they owned, had ownership interest.

12 THE COURT: All right. So so far as -- what we'll do
13 with future interrogatories -- you made your record. You're
14 without prejudice. You're without prejudice.

15 I don't know what I'm going to do about it, but Mr.
16 Fuxsa, I want him to go back, make sure he has the -- you
17 know, you go back because you got some stuff from the old firm
18 too, so make sure you have got the prosecutor's report.

19 MR. FUKSA: There is a problem with that, what your
20 Honor just stated, because I realize that the production that
21 we have made to opposing counsel originally is being withheld
22 from me. I had a telephone conversation on Thursday, I
23 believe -- Wednesday with Mr. Karr --

24 MR. MICHAELS: And, Judge, I would just say this. First
25 of all, I will go and get the Bates number of the prosecutor's

1 report and e-mail it to Mr. Fuksa by Monday at the latest. I
2 will also check with Mr. Kozlowski, who speaks Polish, and can
3 tell me if there are other things in our production --

4 THE COURT: Good.

5 MR. MICHAELS: -- that they want to consult and I will
6 give him the Bates numbers of those documents.

7 THE COURT: Good, that would be very helpful. And then
8 his -- but Mr. Michaels', I guess, answer in his interrogatory
9 answer, is it like the flip side of this chart? Did they --
10 did Karr give you an interrogatory?

11 MR. MICHAELS: What they did is they walked through the
12 complaint. So that chart is a more -- our complaint lays out
13 many but not all of the transactions that are in the chart and
14 what Karr's interrogatories did is they basically went through
15 paragraph by paragraph and said why, what facts support your
16 allegation that this transaction was fraudulent, et cetera.

17 And then -- so our interrogatory responses were, which
18 Karr never objected to, were incredibly detailed about why we
19 thought the various transactions were fraudulent.

20 Now, we don't and are not able to -- I mean, there is
21 some of this stuff that we just don't know. We have
22 "investigation continues."

23 The basis for our belief that, for instance, Company X
24 didn't perform these services is that, no, the principal
25 doesn't speak English and the services required English to be

1 spoken, someone else did the services and we identify who they
2 are, et cetera.

3 But some of them, we know more on some than on others.
4 So it would seem to me between the prosecutor's report, their
5 own knowledge -- I mean, they're the ones who conducted these
6 transactions with themselves and our interrogatory responses
7 ought to be, whatever their position is they ought to be able
8 to provide it.

9 MR. FUKSA: Judge, one other thing. With respect to
10 answering those, when I talked to my clients, they even said
11 that they don't know if these transactions that are listed had
12 actually been consummated or whether it was just potential
13 transaction. So that's how little they're able to contribute
14 to answering these at this point. So that's also, the other
15 issue is whether there were actual transactions, and I don't
16 know if you know that now.

17 MR. MICHAELS: They are actual transactions.

18 THE COURT: Well, then, that would actually be pretty
19 interesting if they say they weren't.

20 MR. MICHAELS: Right.

21 THE COURT: I mean, that could be an answer too. I
22 mean, if that's their position, then that's fine.

23 MR. FUKSA: Right.

24 THE COURT: I mean, that can be their position.

25 MR. MICHAELS: Absolutely. But to clear up to the

1 extent -- to clear this up for you, we did not put on that
2 chart any transactions that we did not believe based on the
3 evidence we have seen did not in fact occur. Those were not
4 transactions that were payments that were scheduled, those
5 were payments that we maintain were actually made.

6 THE COURT: And your question to each of these parties
7 is the exact nature of the goods or services or consideration
8 provided. So it is -- because all we have on this chart is
9 the recipient, the payor, and the amount, the identity of all
10 documents regarding the transfer, the name, title, and last
11 known address of all persons associated with the person or
12 entity who provided the goods, associated with the KBP entity
13 who interacted with the person or entity. Okay.

14 MR. MICHAELS: So I mean, we are just seeking their
15 explanation for the transactions.

16 THE COURT: Well, it's not that I'm not -- it's not that
17 I am not sympathetic to how much work it is, but truthfully,
18 sir, how could you defend the case without knowing this?

19 MR. FUKSA: I agree.

20 THE COURT: I'm sorry. I mean truthfully, if it takes
21 them working around the clock between how are they going to
22 defend the criminal case without knowing it and how are they
23 going to defend this civil case because, you know, your client
24 or your client's rep have always thought these guys were out
25 on a fishing expedition and how are you going to show it's a

1 fishing expedition unless you know every one of these
2 transactions?

3 MR. FUKSA: I agree \$100 percent, Judge, but my only
4 reason for saying fishing expedition is what I can't
5 understand is if they allege that these are fraudulent
6 transactions, why not at least show some basis for why these
7 were -- like a contract, or something, so I could then say,
8 okay, you know what? We are going to identify these
9 transactions that are of such great concern, not ones that
10 were for maybe paying a utility bill.

11 MR. MICHAELS: There is no utility bills on there.

12 THE COURT: There is nothing. I mean, the amount in --
13 what's the PLN?

14 MR. MICHAELS: It's about three times. We only included
15 ones over 10,000 Zloty.

16 MR. FUKSA: So if you divide that amount by 3 or 4, then
17 you will get dollars.

18 MR. MICHAELS: And most of them are substantial. You
19 know, other than -- this has been outstanding since August.

20 THE COURT: Right.

21 MR. MICHAELS: I mean, we have -- you know, they are
22 taking this approach where they're sprinting over in Poland to
23 try to further dilute our interests, but they want to get to
24 call to get this stuff down here, and you know, it's neither
25 fair nor reasonable to proceed that way.

1 THE COURT: So I'm going to give you, in fairness to you
2 particularly, I am going to -- you're going to come back in
3 about a week -- hang on, I don't know yet what date. But
4 you're going to come back and Mr. Fiksa is going to tell me
5 after you read prosecutor's memo, you see where all this stuff
6 is, your paralegal sits down with the prosecutor's memo and
7 fills in these blanks here, okay, because that's what you're
8 asking him to do.

9 And you're going to take the answers to their
10 interrogatories, make a nice chart, all of that is going to be
11 there and then we're going to at least, by the time you come
12 back, we're going to have some answers from your fellows
13 because I'm not going to give you four months without seeing
14 if their answers are complete.

15 MR. FUKSA: Right.

16 THE COURT: I mean, we want to make sure we are going to
17 keep this on track so we know that at least if we're having to
18 put this off a little bit that they are in fact doing it.

19 MR. FUKSA: Right. That's fine, Judge.

20 THE COURT: So we'll pick a date by the 10th. So the
21 second thing is a timetable for producing the responsive
22 documents from Swiech's hard drive.

23 MR. FUKSA: Yes. So, Judge, that's another thing we met
24 about. I had met with my clients, and this is -- this is what
25 they tell me with respect to the volume. It seems -- I don't

1 want to exaggerate, but what they say is it's probably a
2 couple hundred thousand pages. One of them said 500,000. I
3 don't want to, you know, say that that's the amount. But this
4 is just to give some idea of how many pages there are. And
5 what they are doing now, they're in the process and in fact,
6 my client said he could probably have the first two discs for
7 me by Monday. They're in the process of --

8 THE COURT: Now, wait, hold on.

9 (Pause)

10 MR. FUKSA: 21 discs. That's the hard drive
11 information, is the 21 discs.

12 (Pause)

13 MR. FUKSA: Judge, what your Honor said is to have a
14 timetable for producing those. Those were never looked at by
15 anyone yet.

16 MR. MICHAELS: Well, we don't know what Karr did. Gordon
17 & Karr were ordered in July to -- or in June to review those
18 and produce them by the end of August. Apparently, they did
19 nothing and they didn't even -- I mean, these documents I
20 understand, these files are in like native formats. In other
21 words, they were not -- so it's just discs with like Excel or
22 Word Perfect documents or whatever and they weren't -- Gordon
23 & Karr, defendants never caused even the most basic step to
24 happen to produce these, which is send them to a vendor, have
25 them turned into PDFs and get them Bates labeled, which is --

1 the -- that still hasn't even been done. It first came up in
2 June.

3 MR. FUKSA: So, Judge, this is in fact what my clients
4 are doing and it's not that simple because there is privileged
5 notes on some of the documents.

6 MR. MICHAELS: There are lawyers' notes on there?

7 MR. FUKSA: There is comments, comment bubbles that have
8 nothing to do with the actual original documents. So in any
9 event, they're going through and they're putting them on a
10 PDF, Bates labeling all of them so that it makes it so much
11 easier because the problem with some of these, there will be
12 an e-mail and then that e-mail will have two or three
13 attachments and one could be in Word and one could be in
14 Excel, and it has to all be PDF'd, Bates labeled, and then
15 that's the manner in which we would turn it over.

16 THE COURT: When you say your clients are doing this,
17 you're not doing this or your vendor is not doing this?

18 MR. FUKSA: They didn't want to expend the costs on
19 doing it.

20 THE COURT: So who is going to certify this then? Who
21 is going to do the privilege log if you're going to withhold
22 anything? Who is going to do the inventory?

23 MR. FUKSA: I'll --

24 THE COURT: I mean, now, just hang on. I mean, who is
25 going to --

1 MR. MICHAELS: Are you going to review them after you get
2 them from your client?

3 MR. FUKSA: Of course. Of course. I don't necessarily
4 think -- there was an occurrence of, for example, a comment
5 bubble, as you sometimes see on a PDF document or you could do
6 it on a Word document when you're -- but the -- I don't think
7 that happened so much, so my concern is not even so much with
8 privilege as it is just getting these documents in a format
9 that are very easy to review, to produce, and, of course, for
10 me to go over. And I have a time frame, Judge. So I mean
11 maybe -- I did sit down and talk with my client and you know,
12 we had agreed that we would do two discs per week and possibly
13 more and just do rolling discovery and by that calculation we
14 should have everything done by January 8th with respect to
15 these -- with the discs. So I think that's reasonable. They
16 would be, you know, produced on a weekly basis also so then
17 opposing counsel has time to review them.

18 THE COURT: Right.

19 MR. FUKSA: Because they will need that. And they're
20 working on it as we speak even because I know I'm getting
21 these this weekend, at least our first two hopefully.

22 MR. MICHAELS: But just so I understand, what you're
23 getting then, that just begins your work.

24 MR. FUKSA: No, no, no, no, no, that would include --

25 MR. MICHAELS: Then you get the PDFs and you have got to

1 review the PDFs.

2 MR. FUKSA: That would include my review of it.

3 MR. MICHAELS: And if you just sent them to a vendor, you
4 could have them all back and start your review in three days.

5 MR. FUKSA: Judge, I can't force my clients to pay a
6 couple thousand dollars to send them to a vendor. We had that
7 discussion. Mr. Michaels knows it too. And I responded and I
8 said they want to do it themselves. He has a program that
9 helps facilitate the process. It's not as if, you know --

10 MR. MICHAELS: Why didn't he use it over the summer? I
11 mean, you know, the whole -- all of the circumstances
12 surrounding these documents has been so bizarre from the very
13 beginning, you know.

14 MR. FUKSA: Judge, I'm giving a clear timetable. There
15 is two discs per week. There is, as I said, probably a couple
16 hundred thousand pages. I think it's very reasonable
17 considering how much other work there is to do in this case.

18 THE COURT: So go back to what you just -- I'm listening
19 on everything here. Go back to what you just said about car.
20 See, I thought Karr had the 15 discs.

21 MR. FUKSA: There is 21.

22 THE COURT: I thought they had them.

23 MR. FUKSA: They did. Remember, Judge, in my motion I
24 pointed out that I didn't get them until September 27th
25 because they withheld them, and if your Honor recalls, Mr.

1 Michaels had issued a subpoena and we appeared before your
2 Honor.

3 THE COURT: To Karr.

4 MR. FUKSA: Right, to Karr, and then once they obtained
5 that, within a week they then said okay, you know, we will
6 produce those.

7 THE COURT: So you have them already then?

8 MR. FUKSA: Yes, I have them.

9 THE COURT: Well, that's good.

10 MR. FUKSA: And, Judge, really, we're going above and
11 beyond in producing these documents because there is so much
12 information, I could have said limit it to really the on point
13 discovery that is requested. Instead, we're really giving
14 just everything that we have. And in fact, which may not be
15 the best news for this court to hear, there is more documents
16 that we will be producing substantial, and it's not -- and I
17 don't want, you know, Mr. Michaels to say "Why are you
18 discovering these now" because some of them are as a result of
19 my client, who was recently in Poland, copying documents from
20 the prosecutor's file and also obtaining additional documents
21 from an office computer that they -- they kind of more were
22 geared toward or addressing other entities, but they're
23 looking through all these documents.

24 So all I'm saying is that I don't want to then surprise
25 the court by saying, "Oh, by the way, we found a couple more

1 hundred thousand or tens of thousands of documents."

2 MR. MICHAELS: I would say on any document from the
3 prosecutor's office, the prosecutor has a big storehouse of
4 documents, which is part of the reason why his office was able
5 to create that (UI) or two. He allowed all the parties access
6 to those records. We have someone right now copying those
7 records and we're going to review them and then produce them,
8 so we don't need --

9 THE COURT: You don't know whether they have been turned
10 over?

11 MR. MICHAELS: I don't know what you guys copied from the
12 prosecutor's office.

13 THE COURT: So do you have, do you have an inventory --
14 does somebody have an inventory of the documents that the
15 prosecutors have and could you share that with counsel?

16 MR. MICHAELS: We are going to be preparing --

17 THE COURT: Your own inventory.

18 MR. MICHAELS: -- our own inventory that we would share
19 without waiving any privilege or work product or anything.

20 THE COURT: Right, right.

21 MR. MICHAELS: So we can I think put aside for today the
22 discussion of documents --

23 THE COURT: In the future.

24 MR. MICHAELS: -- from the prosecutor's office.

25 THE COURT: Okay.

1 MR. MICHAELS: In the -- to a future date.

2 THE COURT: This sounds like -- these sound like
3 documents counsel did not know about, maybe weren't turned
4 over to the prosecutor either, so --

5 MR. MICHAELS: Well, I mean, that's a whole separate set
6 of concerns --

7 THE COURT: That's another -- yes, it is. It is. Okay.

8 MR. MICHAELS: But as far as these hard drive
9 documents --

10 THE COURT: All right so -- hang on, hang on, hang on,
11 I'm trying to -- okay, so we need the date for the plaintiff's
12 second set of interrogatories, these guys. We need the
13 timetable for producing the hard drive, that's a discrete. We
14 need a deposition schedule, and we need the production of
15 undisclosed bank accounts and bank records. What's that?

16 MR. MICHAELS: What that is, your Honor, is in
17 Document 2010 when you granted in part our motion to compel,
18 the motion covered two interrogatories and document requests
19 and the interrogatory was identify bank accounts that you had
20 at any point between '97 and the present and then to produce
21 records from those accounts. We received responses that
22 identified a handful of bank accounts and we received a
23 handful of bank records. As we reviewed those records, we
24 realized, we were looking at the bank records and oh, gee,
25 there is a check signed by one of the defendants from an

1 account that's not disclosed. So we subpoenaed that bank.
2 All told, up to now we found 19 undisclosed bank accounts.
3 For 17 of them we were able to subpoena the records at our own
4 expense, which we shouldn't have had to do from the banks
5 themselves.

6 Two of those accounts are overseas, and we're not able to
7 obtain them by Rule 45 subpoenas. One of the accounts and the
8 one that we're most concerned about is an account, and it's
9 been discussed in this courtroom before, of Adam Swiech's at
10 Julius Baer Bank in Switzerland.

11 From the first time we raised this issue Adam Swiech
12 denied having an account. We then found some documents
13 showing transfers into this account. He still denied having
14 the account. I then found additional transfers into the
15 account. So there is now 3 or 4 transfers we found and I have
16 the records that I could show you and I have given them to Mr.
17 Fuksa that shows the transfers into this account of Adam
18 Swiech at Julius Baer bank, and I then sent Mr. Fuksa a letter
19 with all the evidence and said Mr. Fuksa, please, our proposed
20 solution to this is to have Adam Swiech sign a letter to his
21 Swiss banker asking that the records be sent to Mr. Fuksa's
22 office because those records in our view are within clearly
23 Adam Swiech's -- he has legal access to those documents.

24 Now, Mr. Swiech's position, and instead of just denying
25 he knows anything about the account outright, is no, the

1 account belongs to my son, who is presently 19 or 20 years
2 old. So in 2008 his son was approximately 16. He is saying
3 the account in which you guys are alleging unlawful
4 transactions took place, that's my kid, he did it. It's his
5 account.

6 So the dispute we're having now is, you know, our view is
7 that that's not credible in that Adam Swiech, who, by the way,
8 has given his son a power of attorney to act for him in Poland
9 in respect to all sorts of matters, still has effective
10 control over that account and needs to produce the records and
11 I have a letter here that he could sign and send to his banker
12 at Julius Baer and produce the records to us.

13 By the way, all the transactions we found in that Baer
14 account were directly relevant to this case and I attached to
15 the -- for each transfer we found, stapled together is the
16 flow of money where it can be traced back in most cases
17 directly to a KBP entity and then the money flows into Adam
18 Swiech's Swiss bank account or the one he now says was his
19 teenage son's respecting that.

20 THE COURT: Is that the only bank record you're missing?

21 MR. MICHAELS: The other account is an account belonging
22 to Derek Lewicki at HSBC in Poland. Mr. Lewicki, from what I
23 gather from my conversations with Mr. Fuksa, Mr. Lewicki does
24 not deny ownership of the account or doesn't say that it's
25 some other Derek Lewicki's account, but he is taking the

1 position that "Well, I didn't open that account until later,
2 so you don't get to see it."

3 MR. FUKSA: I mean, Judge, it is what it is. The
4 account, what I have been told, is not the Adam Swiech who is
5 in lawsuit, it's the son. And so if Mr. Michaels wants to get
6 those records, there is a process to do that, and furthermore,
7 my client Derek Lewicki said he would even try to facilitate
8 the process from what he knows by trying to explain some of
9 the transactions that were made as referenced in the documents
10 that Mr. Michaels provided.

11 With respect to the second HSBC account, my client has
12 told me that that was something that was opened in 2010 and
13 has nothing to do with --

14 THE COURT: Well, he should have an opening document. I
15 mean, if that were true --

16 MR. FUKSA: Yes, I told him --

17 THE COURT: I mean, if that were actually true, it did
18 open in 2010, I don't know when the fraud is, but I guess
19 under their theory, it's continuing until today. So --
20 well --

21 MR. FUKSA: He said he would obtain that for me, Judge,
22 the document creating the account.

23 MR. MICHAELS: Mr. Lewicki himself, I think of those 19
24 undisclosed accounts, at least 12 of them were his. So I
25 mean, to suggest that we ought to take his word for it in

1 this, we're past that point.

2 THE COURT: Well, it's -- all right, all right. So what
3 I'm trying to figure out, I can only do -- you know, I'm
4 trying to see what I can do without a motion and what has to
5 be motioned, okay, because I mean, somebody has to ask for
6 some specific relief, okay?

7 So let's go back to Karr for a minute. Now let's go back
8 to these people. What have you found out that Karr has
9 withheld, and apparently they're telling you, and by the by
10 me, too bad. So what are they telling you? And be careful
11 what you say, because I mean, how you're being told what --
12 are they telling you they have documents they're not giving
13 you?

14 MR. FUKSA: Yes. Those are the documents that we
15 produced in response to plaintiff's production request.

16 THE COURT: So you don't have copies of those?

17 MR. MICHAELS: Plaintiffs would have copies.

18 MR. FUKSA: Plaintiffs would have them, right. I
19 believe it's what Mr. Michaels had referred to as maybe 4,000
20 or 5,000 pages, actual physical pages --

21 MR. MICHAELS: Mostly was produced in hard copy to us. I
22 mean, we're -- I'm happy to go have it copied and send it back
23 to him. We can't pay for it. But if he wants those documents
24 back -- I mean those, just to be clear from the Gordon & Karr
25 standpoint, those were not the subject of our subpoena because

1 we had already received them from Gordon & Karr. So our
2 subpoena was limited to things that we had not yet received
3 and it was really not -- you know, it was not for us to try to
4 make sure Mr. Fuxsa had everything from them, we just wanted
5 the stuff that we had not seen yet.

6 MR. FUKSA: I was just bringing that up, Judge, to
7 facilitate my production and really know what has happened in
8 this case because if I don't know what documents we have
9 produced, I don't have any of those, it's a difficult position
10 to be in.

11 MR. MICHAELS: On that, we got to step back and look --
12 if they would just pay Gordon & Karr their fees, you would
13 have had the documents. I mean, again, this is another
14 example of these guys rushing head long to further injure us
15 in Poland and here doing everything they can to gum up the
16 works.

17 MR. FUKSA: You know what, Judge? Maybe I could relay
18 the costs of copying these 4,000 or 5,000 pages and we will
19 probably -- I can't imagine it would be more than maybe a
20 couple of hundred dollars if we did it with some vendor and
21 maybe that will take care of it.

22 MR. MICHAELS: I have a vendor if you want me to send
23 them to, and I'll send them to the vendor and then you can pay
24 the vendor. I'm happy to do that at any time.

25 THE COURT: Seems like the most direct way.

1 MR. FUKSA: That shouldn't be a problem, I don't think,
2 Judge.

3 MR. MICHAELS: They can pick them up. I'll have them --

4 THE COURT: I need to talk to Chris. We will have a
5 five-minute break.

6 MR. FUKSA: Thank you, Judge.

7 (Recess)

8 THE CLERK: All right. So I'm calling it that we had
9 five issues that I was aware of and you may have something
10 else, okay? But let me do my five, okay?

11 First is the Karr documents. Mr. Michaels is extremely
12 gracious, so that I don't have to get into a fight with the
13 Karr people, you make arrangements and get those documents if
14 you want them. If you don't want them, you don't want them,
15 okay, or they can't afford them or whatever. Okay. So that's
16 number one.

17 Number two is between now and when you're coming back,
18 and we are going to talk about this in a minute, I want you to
19 look at the pros memo from Poland. This is on the
20 interrogatories and the chart. You're going to review the
21 pros memo, you're going to -- and you're going to look at --
22 Mr. Michaels is going to get you today, hopefully, if you
23 don't have a copy of or by Monday a copy of his answers to the
24 interrogatory. He also told you that the complaint is a
25 roadmap of the entire thing too. You're going to do a

1 sampling answer of ten of the answers because here is what
2 we're doing. When you come back on this and the hard drive,
3 we're going to not -- we're going to make sure if we're going
4 to have a rolling production that you're doing it correctly,
5 because I don't want a rolling production and then four months
6 from now these fellows not answering or half answers or
7 something else, okay, because it's not just Mr. Michaels and
8 Mr. Fuksa. I have had this case from day one -- no, not the
9 first four complaints and I know your clients were weary from
10 the number of complaints.

11 I understand all the history in the beginning. But from
12 day one they have not lived up to their responsibility in this
13 lawsuit on producing things. It's been excuse after excuse
14 after excuse, and I get paid to be patient. So I have to be a
15 little bit more patient. You're a young lawyer and I don't
16 personally want to hurt you as a result of it.

17 I'm as frustrated as Mr. Michaels is, okay? I mean,
18 these clients, you have got to get a grip on these clients.
19 That's why when you come back we're going to have the sampling
20 of a couple of the tapes that you're turning over. Mr.
21 Michaels is going to make a report and tell me, even if you
22 have to stay up all night, you're going to go through, and the
23 same thing on the hard drive because you're doing this rolling
24 production and you said two a week, or no, two a week?

25 MR. MICHAELS: Right.

1 THE COURT: Two a week. So you're going to give him
2 two, he is going to take a look at them, he is going to make
3 sure he can read them, he can understand them, he -- what kind
4 of shape they're in, and you're going to give.

5 MR. MICHAELS: So 10 transactions --

6 THE COURT: 10 transactions as a sampling.

7 MR. MICHAELS: Right.

8 THE COURT: And then you're going to see if they're
9 doing this. Because before I give you four months or
10 something, I don't want to just leave it like that. We are
11 going to do an interim checking and make sure we're okay.

12 As far as the Swiss bank goes, I'm throwing it back to
13 you, Mr. Michaels. You figure out -- I have never understood
14 Swiss law. You figure out what you want me to do. If you
15 want to file a motion on that, you can file a motion. If you
16 file a motion and say I should make them do it, you have got
17 to give me -- I don't know any law that says I can make --
18 maybe there is law that says I can make a client sign a
19 release, I don't know.

20 I mean, I don't know and you also find out if you want to
21 start the letters rogatory, although I don't think -- I don't
22 know whether Switzerland is part of it.

23 MR. MICHAELS: I'm glad you mentioned that. On the
24 letters rogatory process there are, just so you know, this
25 is -- I don't think this will be contested, but there are

1 certain witnesses who we need to get information from who we
2 are not in a position to get them to agree to travel to London
3 or Prague or anywhere elsewhere an American style is
4 permitted. The evidence has to be gathered from them pursuant
5 to a letter of request process, which your Honor has to sign.

6 THE COURT: Yes.

7 MR. MICHAELS: We're going to be preparing letters of
8 request and getting them to you.

9 THE COURT: Good, good. They take sometimes 18 months,
10 okay? So sooner better than later, and if there is any
11 authority that I could force a party to sign a release, you
12 get it to me. I mean, I can't do any more, I can't do any
13 more than that, okay?

14 MR. MICHAELS: Your Honor, I just want to -- that's fine,
15 obviously. And would you have a -- I mean, in our view this
16 really is a -- they have already been ordered to produce this
17 stuff pursuant to the grant of the motion to compel in
18 December of 2010. These are bank records. This isn't like a
19 new motion to compel. I don't know -- it's like a contempt
20 motion. I don't know how to style it or --

21 THE COURT: I don't know what to call it either and I
22 don't know if I don't have on a third-party, I mean, I don't
23 know if I have no jurisdiction -- I don't know.

24 MR. MICHAELS: Okay.

25 THE COURT: That's why this one I'm throwing back to

1 you.

2 MR. MICHAELS: We will have to -- and I guess -- we will
3 just take whatever --

4 THE COURT: Whatever relief you want. Whatever relief
5 you want, okay? And the deposition schedule is on hold at the
6 moment unless there is somebody you want to depose. I mean,
7 it would seem to me that you would want to at least have the
8 records for the deposition. So --

9 MR. MICHAELS: And on that, your Honor, there is one
10 thing that Mr. Fuksa and I had something approaching an
11 agreement on. There is one witness who we sent a subpoena to
12 who was a cousin of one of the defendants who shared an
13 account with her, another undisclosed account into which money
14 from KBP is coming every month. We would depose her on
15 November 8th, but the two party depositions scheduled for the
16 9th and 10th, we will defer those until -- which would take a
17 lot more work to prepare for and Mr. Fuksa told me that Ms.
18 Draun, the cousin, doesn't know anything and in that case it
19 should be a very simple deposition and not take long.

20 MR. FUKSA: This is what I'll say. I would agree to
21 that with this limitation, that the questions directly stem
22 from the -- from what Mr. Michaels found, the joint bank
23 account of hers and Ms. Swiech's, because otherwise, I don't
24 want to get involved and be bombarded with all those other
25 documents that she has to look at and exhibits that she has to

1 look at and answer, and I'm completely clueless as to those.

2 I would limit it to the bank accounts, in which case he
3 could ask "Why were you on this bank account, did you ever
4 receive money from KBP," things of that nature. That I'm fine
5 with. Otherwise --

6 THE COURT: So you're willing to bring her back for a
7 second dep? I mean, are you willing to -- does she live here
8 or in Poland?

9 MR. MICHAELS: She lives --

10 MR. FUKSA: She lives here.

11 MR. MICHAELS: -- here in northeastern Illinois near
12 Rockford.

13 THE COURT: All right. So are you willing if he needs
14 this for his subpoenas, you start the dep, limited to the bank
15 account. If he has more questions of her later on, you agree
16 to a second dep, how about that?

17 MR. MICHAELS: The trouble with that, your Honor, I don't
18 know if Mr. Fuksa even represents her. We sent her the
19 subpoena and I'm not -- if there are objections he wants to
20 make to questions on relevance or anything else, make them on
21 the record. I mean, you told me that she doesn't know
22 anything so assumedly, whatever I ask there is nothing to
23 prepare for. Whatever I ask her about, she is going to say "I
24 don't know." So I mean --

25 THE COURT: Then you're finished. So I guess that would

1 be easier.

2 MR. FUKSA: Well, that's true, Judge, but I don't -- in
3 that case then, let's bring this to the table maybe at our
4 next interim meeting because if we can't be limited just to
5 the bank account, that's really the only thing that I have had
6 a chance to speak to my client about, is the bank account.
7 That's all I'm aware of that she was just placed on for no
8 really reason whatsoever, at least that relates to the
9 allegations of the complaint.

10 And so if we can't limit it, I would like an opportunity
11 to see what other information I would need to obtain before we
12 actually schedule this.

13 THE COURT: All right. So when is your -- okay, I'm
14 trying to figure out, because I want by the time you come
15 back, I want the sampling of the interrogatories from the
16 chart, the 10, and I want the 2 of the drive, so you said once
17 a week, so I'm assuming by next Friday.

18 MR. FUKSA: We would have the two discs.

19 THE COURT: Right. So here is when I would like you to
20 come back, would be actually either the 8th or the 9th. Do
21 you have a calendar? I need to go get my calendar. I need a
22 hard copy.

23 (Pause)

24 THE COURT: All right. If we did Wednesday -- no, hold
25 on. I have two settlements on Tuesday. How about if we did

1 Wednesday, November 9th, at 8:00 in the morning?

2 MR. MICHAELS: 8:00?

3 THE COURT: Or 7:45.

4 MR. MICHAELS: That's okay with me. That was the date
5 for one of the party depositions that we agreed to defer.
6 It's the day after, however, the deposition for the cousin who
7 has the bank account.

8 THE COURT: See, I don't think you're going to have time
9 to review if you're not going to get this stuff until Friday.

10 MR. MICHAELS: Right.

11 THE COURT: I mean, I want you to be able to tell me and
12 not -- maybe not with the precision, Mr. Michaels, because you
13 are a very precise person. I'm not talking about your level
14 of precision, but if you can work with the stuff or you can
15 concretely say "Here is what I need," okay? I want to put
16 this in fairness, okay?

17 And this is to help with the going forward too. We're
18 not stopping and going back and get you better copies in the
19 next week because -- but hopefully, your suggestions, ideas
20 will help them to do it, okay?

21 MR. MICHAELS: I understand that. And that is a very
22 straightforward thing to do with respect to the interrogatory
23 responses.

24 THE COURT: Right.

25 MR. MICHAELS: With respect to the documents, there is

1 just going to be documents on two discs. Some of them will be
2 in Polish that I can't read myself, but my clients help me
3 read, usually very quickly.

4 THE COURT: Right.

5 MR. MICHAELS: And all I could say is if they're in --

6 THE COURT: We're going to know more than we know right
7 now because it's then this darn hard drive, this, you know, I
8 mean, at least somebody other than counsel, who has been in
9 the case two months and the clients looking at the hard drive,
10 somebody else is going to look at the hard drive.

11 MR. MICHAELS: Well, yes, we would be looking at the
12 documents that supposedly came from the hard drive, but yes.
13 I understand the concept is let's get this test run done.

14 THE COURT: Yes.

15 MR. MICHAELS: Let's set a good pattern --

16 THE COURT: Don't you agree this is a good idea, that at
17 least then -- so if you could come in, that's why I'm just not
18 thinking deps at the moment because you have got -- I would
19 really like to get us straight on what we need so we can get
20 these fellows, you know, getting this written stuff down. So
21 whatever you want to do on your deps or you know, I'm not
22 going anywhere. Nothing is going to hurt you and if you can't
23 agree -- he doesn't have to agree to limit it so maybe yours
24 is a motion to put it off until you know more about the case
25 then. I don't know what it is, okay?

1 MR. FUKSA: We will discuss that.

2 THE COURT: So 7:45 on November 9th. Now, so I had --
3 and then hopefully, the other thing that's going to happen is
4 if your clients are going to pay for this copying so that you
5 can get an idea on the documents you have got because you're
6 asking me for somewhat of an extension of fact discovery based
7 upon what you have to do, so you need to look at least to see
8 if that number of documents you're getting -- well, you speak
9 Polish anyway, but if -- how you're factoring that into it
10 too.

11 MR. MICHAELS: And, Judge, there was one more issue on
12 the foreign account.

13 THE COURT: Yes.

14 MR. MICHAELS: On the Swiss bank one, I hear you back on
15 us, we'll figure out the right way to approach that. On Derek
16 Lewicki's account at HSBC, our view is you had indicated that
17 the account records are responsive, he violated the order by
18 withholding them in the first place, and he ought to produce
19 them now.

20 THE COURT: Well, you need to put that in a motion. I
21 mean, I don't have a ruling in front of me. That's not --
22 wait, is that his kid's?

23 MR. MICHAELS: No, that one is not a kid. He admits it's
24 his own account. He is just saying "Well, take it from me, I
25 opened it later so I shouldn't have to produce the records."

1 There is an order entered --

2 MR. FUKSA: Judge, in any event, in any event, I would
3 then object anyway if in fact it's not responsive to the
4 allegations of the complaint, and maybe what we could do, as
5 your Honor mentioned, is by that date have my client produce
6 the paperwork regarding the opening of the account, to show
7 when it was opened.

8 MR. MICHAELS: I mean, to us that doesn't advance the
9 ball because even if he happens to be telling the truth about
10 this one, whenever it was opened, we believe that it's still
11 relevant in that, you know --

12 MR. FUKSA: In that case, Judge --

13 MR. MICHAELS: -- they have withheld 19 accounts they
14 didn't disclose to us. I mean, at some point there is a
15 consequence for something, you know.

16 MR. FUKSA: In that case, Judge, I mean, when do we stop
17 the discovery? How do we limit the discovery? Is it to be
18 for every single thing that's done everyday going forward,
19 whether it be opening a bank account or buying a car is
20 subject to discovery?

21 THE COURT: That's up to Judge -- that's a legal issue
22 for Judge Bucklo, not for me. I mean, right now discovery is
23 broader than -- I mean, discovery is broad. So I haven't
24 got -- I mean, unless somebody brought something to me -- but
25 this is 2010. This isn't today anyway. You --

1 MR. JASZCZUK: Your Honor, I have been very quiet for
2 most of this time.

3 THE COURT: You have.

4 MR. JASZCZUK: I have tried to stay out of this and let
5 them take care of it, but at this point I do have some
6 thoughts I want to share with the court.

7 In virtually every case I have ever been involved in, the
8 discovery, even if it's broad, is relevant to the point that
9 the complaint is filed, because the complaint by its nature
10 alleges certain things happening, which has to have been part
11 of the complaint.

12 So this would be the first case I have ever been involved
13 in where discovery two years post complaint being filed, which
14 the allegations have nothing to do with, would be considered
15 relevant.

16 Now, I understand that Mr. Michaels is saying it's an
17 ongoing thought, but if he feels that there are other issues,
18 you know, that are still ongoing, he needs to amend his
19 complaint to bring those within it.

20 So while I don't have strong views on many of the things
21 that are discussed, if we're going to move discovery forward
22 on things that happened after the complaint was filed, then
23 that's going to open, I believe, a Pandora's box of additional
24 documents and testimony from additional people because hey,
25 who knows who opened how many accounts yesterday or the day

1 before or at any time after the complaint. So --

2 MR. MICHAELS: While I appreciate Mr. Jaczczuk's efforts
3 to help Mr. Babitzsky on this point, I think that we allege an
4 ongoing fraud, that's what the complaint alleges. We
5 certainly intend to amend, as plaintiffs often do, to conform
6 to proof. The scope of discovery is far broader than
7 documents that you can trace with a black line directly to a
8 particular transaction alleged in this complaint.

9 As Judge Bucklo's order denying their motions to dismiss
10 made clear, this complaint is extraordinarily detailed, it's
11 extraordinarily precise, and it clearly alleges an ongoing
12 fraud. He didn't only withhold the account that's supposedly
13 opened in 2010, he withheld accounts that were used throughout
14 this fraud. He withheld accounts in names of entities that he
15 failed to disclose to us.

16 MR. FUKSA: Judge, first of all, the whole withholding
17 and these allegations, I'm not -- I've got to accept that
18 because there were different attorneys that represented my
19 clients at that point.

20 What I have seen and as a result of me being able to get
21 these documents is there has been a very strong lack of
22 communication between the attorneys and the clients with
23 respect to "Listen, this is what you have to get done because
24 when it comes to trial and you're trying to prove your case,
25 these are the things you're going to have to show as well."

1 So.

2 I have made that clear to them, okay, and so I think
3 they're going to be very responsive. I just don't think they
4 were sat down and told -- maybe it was an issue of language
5 lost in translation, but the other thing is so -- first of
6 all, I don't like Mr. Michaels saying that they have withheld
7 these and they were being deceptive, whatever else.

8 With respect to this 2010 account, I mean, if at least
9 there was an allegation in the complaint saying in 2010 there
10 was a transaction such that blah, blah, blah, then I would be
11 singing a different tune. There is no allegation of a
12 transaction in 2010 that was suspicious or fraudulent, so how
13 could it possibly -- how could the discovery possibly be
14 subject to --

15 THE COURT: Okay. So I love the fact that I'm trying to
16 save you guys some motion practice, okay? But just like I
17 don't know on the Swiss bank account, to me it seems like
18 there is a number of questions there, legal questions there,
19 not factual, not that I can come up with some band-aid over.

20 The rest of these things I'm kind of doing triage, okay?
21 I can't do triage on the end date of the scheme. I mean, we
22 can all go look -- we can all go look at the complaint when
23 we're finished. The government in every case -- I was a
24 criminal defense lawyer -- ran conspiracies up to the day we
25 went to trial. It's not unusual at all. I know it's

1 criminal, it's not civil, but I know that's not unusual and it
2 usually is a question of proof, I don't know, but if you want
3 to give -- if you want to -- sounds like Mr. Michaels is kind
4 of getting revved up to say Mr. Lewicki failed to comply with
5 your order of X, okay?

6 So he would, you know, file some kind of a pleading
7 saying "I need you to compel him to do it" or you know, worse,
8 okay? Then you would come in and you would say da, da, da,
9 da, da, whatever you say, okay? I can't go beyond that
10 because that really is a legal issue, okay?

11 MR. MICHAELS: Maybe what we could do is this. If he
12 wants to substantiate the assertion that the account was
13 opened --

14 THE COURT: You need that piece of paper.

15 MR. MICHAELS: -- that at a minimum ought to be provided
16 and then --

17 THE COURT: Before they offer to do it. Before you
18 come --

19 MR. MICHAELS: And then --

20 THE COURT: But you need to, sir, because it's not just
21 Mr. Michaels here, okay? Representations were made to this
22 court and to Judge Bucklo, okay? You know, it's been like a
23 "trust me" from the beginning and we kept because of the
24 Polish language being interjected, because the documents were
25 in Poland, because they would stand here and they would be so

1 exasperated because we're on the 7th amended complaint and
2 everybody bailed, okay?

3 I can take judicial notice of the fact their lawyers all
4 bailed on them. Dienner bailed on them, okay? So we're not
5 writing on a clean slate here. So you need to have a really
6 good heart-to-heart that this isn't just -- I mean, they first
7 have to be straight with you, but between my court and Judge
8 Bucklo's court these are going to be the people who are going
9 to be making decisions for these fellows and I think I even
10 said bring them in. Let them tell me -- I mean, it just
11 doesn't look very credible, and I think it's more than foreign
12 language.

13 MR. FUKSA: Well, with respect to this account, Judge,
14 the only reason really I need to object to this is so that
15 tomorrow another subpoena doesn't go out for another bank
16 account or for purchase of a vehicle.

17 THE COURT: All right. Well, then you will -- I mean,
18 we will see how Mr. Michaels is going to handle that, okay?
19 And then I'm going to give you plenty of time to answer it,
20 but I do think as a preliminary it would help if you gave him
21 under our theory that it was opened in 2010, you would give
22 him the papers that would show that.

23 MR. MICHAELS: The best way I could see to proceed would
24 be if he would, without any further process from us, provide
25 the account opening documents.

1 THE COURT: Right.

2 MR. MICHAELS: Saying "The account was opened in 2010,
3 our position is we therefore don't have to produce any records
4 from it." We would fold into whatever motion we bring on the
5 Swiss account, we would fold into it a discussion if we decide
6 to (UI) this account because they're really both keying off
7 the same order from 2010.

8 THE COURT: Right. Okay? And then you would be able to
9 answer both, and you don't have to do that by a week from
10 Wednesday because you have got enough homework.

11 MR. FUKSA: So I know your Honor set the date for coming
12 back. How about the date for the time in which I actually
13 have to tender these --

14 THE COURT: Next Friday you're turning over -- your two
15 weeks, I mean your first disc, your first disc next Friday.

16 MR. FUKSA: Right.

17 THE COURT: Two discs, yes, you said two discs a week,
18 and I would like the 10 sampling by next Friday too. But at
19 least by Monday before you come back because in order to keep
20 up with your January date we have got to see if we're -- and I
21 need copies -- I would like to see -- I mean, I don't want two
22 CD ROMs, but I wouldn't mind if I saw your interrogatory
23 answers you give them, if you dropped off a copy.

24 MR. MICHAELS: I'll send those over -- do you want them
25 electronic or should I just walk a hard copy over?

1 THE COURT: Electronically to Chris. I just want to see
2 them before I come out on the bench.

3 MR. MICHAELS: Oh, sure. I would just need Chris' e-mail
4 and I'll e-mail them and I'll CC (buzzing in microphone).

5 THE COURT: It's on our website.

6 MR. MICHAELS: The last thing here is those -- the party
7 depositions that were scheduled for early November we are
8 willing to defer and we will just revisit the issue.

9 There were the depositions in London of these third
10 parties that I would like to address again when we are back
11 because there are -- there are certain of those people that
12 really probably don't need the documents from Richard Swiech's
13 hard drive from --

14 THE COURT: And you have dates.

15 MR. MICHAELS: And we have been talking about dates with
16 these people, and there are some logistics involved and so I
17 just want to make clear that I'm not agreeing that we're not
18 going to take those in early December. We could talk about
19 moving them back a week or two, and --

20 THE COURT: Well, you don't need -- you're taking the
21 deps.

22 MR. MICHAELS: Yes.

23 THE COURT: And if you don't need the documents, you
24 can't come back to me six months from now and say "I need to
25 retake them." I mean, if you're willing to go ahead, maybe

1 that would be a good use then.

2 MR. FUKSA: I just can't imagine --

3 THE COURT: You need to talk about it. Well, you're not
4 going to -- most of the time the other person sits like a
5 potted plant anyway at the dep. I mean, what the heck are you
6 going to do except go to London and make sure he doesn't say
7 anything to --

8 MR. FUKSA: I understand, Judge. My position is I
9 just -- I would really wish that we wouldn't have to do this
10 until that January -- until after that January date --

11 THE COURT: I know, I know, I know, but if Mr. -- okay,
12 I don't know who they are, I don't know anything so we will
13 put that on the agenda to discuss, but you guys have a real
14 discussion on that too, okay?

15 MR. FUKSA: Okay.

16 MR. JASZCZUK: I would like to be involved in that too.

17 MR. MICHAELS: Certainly. Thank you very much.

18 MR. FUKSA: Thank you, Judge.

19 THE COURT: Oh, here is your -- there you go. So when
20 you -- Mr. Michaels, when you give us -- I don't think we have
21 that list either. So I don't need it today, but when you do
22 the sampling of the 10, attach it so we have it.

23 MR. MICHAELS: I will attach both that -- I will also --
24 I will attach as a separate document. I'll send you the
25 interrogatory responses and the -- that's an integrated

1 chronological list of transactions.

2 THE COURT: Okay.

3 MR. MICHAELS: Okay. Thank you.

4 THE COURT: All right.

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7 I certify that the above was transcribed was
8 digital recording to the best of my ability.

9 /s/ Lois A. LaCorte

10 _____
11 Lois A. LaCorte

Date